

BEFORE THE DEPARTMENT OF FISH, WILDLIFE & PARKS  
OF THE STATE OF MONTANA

In the matter of the adoption of New ) RULEMAKING PETITION  
Rules pertaining to managing )  
commercial use on the Madison River )  
)

TO: All Concerned Persons

1. Petitioner's name and address is Michael A. Bias, Ph.D., Executive Director, Fishing Outfitters Association of Montana, PO Box 485, Twin Bridges, MT 59754.

2. The Fishing Outfitters Association of Montana (FOAM), having over 300 outfitter members and over 500 guide members statewide, represents nearly all the fishing outfitters and the majority of fishing guides across Montana. FOAM also represents over 75% of all 203 Madison River Special Recreation Permit (SRP) holders. FOAM has had a seat at the table in formulating a Madison River Recreation Management Plan since the first inception of the Madison River Citizens Advisory Committee starting in 2011. FOAM has also had a seat on the recently disbanded Madison River Negotiated Rulemaking Committee (NRC). Since then, Fish, Wildlife & Parks (FWP) has been trying to gain formal approval of a Madison River Recreation Plan. To date, no plan has received widespread public support or been approved by the Fish and Wildlife Commission (Commission). Commercial outfitters conducted 11,224 trips on the Madison River during 2017 (FWP data). Nonresident visitors to Madison County expended over an estimated \$23.5 million on outfitter and guide services during 2017 (ITTR data). Any consideration of a Madison River Recreation Management Plan could affect outfitting in Montana and our members' livelihood's and well-being.

3. Following the disbanding of the Madison River NRC in May 2019 and during the June and August 2019 Commission meetings, the Commission and FWP had not presented any proposal for a Madison River Recreation Management Plan. During early 2019, in an effort to address commercial use on the Madison River, FOAM held 9 meetings with Madison River SRP holders, guides, and outfitters to discuss potential management options. From 9 days of NRC meetings during 2019 and 9 FOAM meetings, we compiled recommendations for plan that will help manage commercial use at current levels while maintaining an avenue of entry for new outfitters on the Madison River. FOAM's polls and incorporation of comments from members into this plan represents the majority of commercial use support for these recommendations as part of an adaptive Madison River Recreation Management Plan.

## **ADOPTION:**

### **NEW RULE I: Overall River Use**

Current fishing regulations in the walk/wade sections of the Madison River allow access by boat or vessel, while fishing from a boat or vessel is not allowed. Maintaining current fishing access and floating regulations in the walk/wade sections of the Madison River will maintain the greatest dispersal of commercial use, which reduces crowding across all sections of the Madison River.

- Quake Lake to Lyons Bridge FAS: Walk/Wade Access with Vessel; Status Quo
- Ennis Bridge to Ennis Lake: Walk/Wade Access with Vessel; Status Quo
- Warms Springs FAS to Jefferson River; Status Quo

### **NEW RULE II, Commercial Use Management**

From 2012 to 2016, the upper Madison River has seen a steep increase in use, doubling from 88,000 to 179,000 angler days. Estimates for angler use during 2017 were 207,000 angler days and were obtained from FWP. Outfitted angler days during 2016 and 2017 on the Upper Madison River was 20,018 and 19,662, respectively.

The Lower Madison River extends from the outlet of Ennis Lake to the beginning of the Jefferson River. Recreational use numbers on only the lower Madison River were estimated at 750,000 user days during 2017. Outfitted angler days during 2016 and 2017 on the Lower Madison River was 2,284 and 2,724, respectively.

Though overall angler and recreational use on the Madison River has increased substantially over the last 5 years, managing commercial use is a first step to managing overall crowding on the Madison River. Our commercial use management plan contains the following facets:

- Maximum allowance of trips for commercial outfitters at 2019 levels for all SRP holders.
- Establish a trip distribution pool of available days for merit-based and new entry applicants, similar to the merit-based selection system for applicants applying for entry into the Beaverhead-Big Hole SRP system.
- Flexibility in annual use.
- Loss of unused trips (if unused for 3 years).
- No shoulder seasons shall be established. FWP is resistant to the creation of shoulder seasons. Shoulder seasons potentially increase use and crowding during non-peak times of the year.

- No Rest-and-Rotation of reaches schedule shall be established. Rest-and-Rotation of reaches on the Madison River will adversely concentrate use onto other reaches; thereby actually increasing crowding.
- No restriction on issuance of SRPs. Commercial use data by FOAM has shown that reducing or limiting the number of SRP holders has no effect on the overall number of trips conducted annually by outfitters on the Madison River. This is due to the fact that from 2011 to 2017, 85% of the active outfitters conduct less than 100 trips per year.
- Tier-Based Allocation Plan (see below).
- Evaluation plan starting at year 1 (see below).
- Establish a commercial use working group.

#### RULE III: Tier- Based Allocation Plan

Limit the number of outfitted trips based on historical use using a tiered system based on 2019 commercial use data (for 2017, 86% of the active SRP holders that conducted trips, conducted 100 trips or less). Historically, permit holders conducting less than 100 days remain below that threshold and haven't demonstrated tremendous trip growth. This tier-based plan allows for a buffer and trip flexibility for lesser-trip permit holders (e.g., less than 100 trips), while maintaining historic use trip numbers for larger-trip permit holders.

- The majority of SRP holders operate 100 trips or less.
  - If use is 1-20 trips, SRP holder will receive 25-trip permit.
  - If use is 21-40 trips, SRP holder will receive 50-trip permit.
  - If use is 41-100 trips, SRP holder will receive 100-trip permit.
  - If use is 0, permit allotted a 25-trip permit; if trip use is 0 for 3 years, permit is forfeited and trips under that permit will be placed into the SRP Trip Distribution Program (2016-2017 permits forfeited would create a pool of 750 trips).
  - Trips from the SRP Trip Distribution Pool will be distributed to new SRP applicants in 25-trip increments. The remaining 27 SRP holders have operated more than 100 trips at least once in the previous 3 years (2015-2017).

- If current use is over 100 trips, SRP holder will receive a permit to operate the number of trips equal to their maximum number in the previous 3 years.
- Trips are attached to an SRP Permit.
- No shoulder seasons shall be established. The use allocation is from 1/1-12/31 annually.
- If total trips exceed use permit allowance, SRP holder will be subject to disciplinary action or loss of permit. If exceeding trip allowance is habitual, SRP holder risks losing permit.
- Year 1 Evaluation
  - Commercial Use Working Group to define what is evaluated – Satisfaction, Use
  - Commercial Use Working Group may award trips in established increments (e.g., 25, 50) through the SRP Trip Distribution Program.
- Year 3 Evaluation
  - Commercial Use Working Group will review total use:
    - For those permit holders above 100 trips, if a permit holder has used 80% of their trips or less each year for previous three years, that permit holder will be issued a permit for 80% of their trips. For permit holders under 100 trips, they must use at least the minimum for that tier for three years or drop into the next lower tier.
    - The remaining 20% of trips will be placed into the SRP Trip Distribution Program.
    - If a permit holder obtains over 150 trips in addition to their allocated trips, they will be allowed 5 years to reach their 80% use. (5 years should be sufficient to accumulate that amount of trip growth).
    - If total trips for an SRP holder is 0 for two consecutive years, permit is forfeited and allotted trips will be placed into the SRP Trip Distribution Program.
- SRP Trip Distribution Program
  - Merit-Based
    - Current SRP holders may apply and be awarded additional trips if historical use reaches their maximum allotted trips.

--Additional trips will be considered as part of the total trips for that SRP holder (not temporary as done on the Big Hole and Beaverhead Rivers).

--Additional trips will be subject to the same 80%/20% rules under the 3-year evaluation.

-New Entry

--Commercial Use Working Group will allow a certain number of available trips to be designated for future new permit requests.

- SRP Permits

-Permits are transferable.

--Any SRP holder may hold a maximum of two permits.

--SRP Permits shall remain individual permits to allow transferability of each SRP Permit separately. An SRP holder may request the Commercial Use Working Group to combine permits into one on an individual basis.

--New permits issued will receive a 25-trip permit unless being transferred from a current SRP which will receive whatever permit that current SRP holds.

--SRP Shuttle Drivers: All shuttles operating under an SRP shall be required to pay 3% use fee to FWP, not just those shuttles operating at a BLM location.

#### RULE IV: Evaluation Plan

We propose that commercial use under the Madison River Recreation Management Plan be evaluated quantitatively by section or reach and across time immediately following the first year of implementation. Following the first-year evaluation, similar quantitative evaluations will be conducted following year 3, 5, 7, and 10. Our proposed timeline of quantitative evaluations and reports will allow this program to be adaptive to changing conditions and allow for timely fixing of any flaws or problems in the program. We also propose annual reports be generated that contain quantitative use data by river section and time as well as financial data.

- Conducted after Years 1, 3, 5, 7, 10.
- Determine a carrying capacity using commercial use data and any relevant biological data.

- Evaluate river use from SRP holders—allow for growth to capacity.
  - Use by reach.
  - Use by time segment.
- Evaluate use permit satisfaction and generate use data annually.
- Report team must include a representative(s) from the commercial use community.
- Generate SRP annual reports including use and financial data.
- At year 10, determine best timeframe for subsequent evaluations.

#### RULE V: Education- Social Conflict Recommendations

We promote the use of education and etiquette programs for users, anglers, and landowners. However, we understand that these programs often address the symptoms of crowding across a river and not necessarily provide solutions to the cause of crowding or conflicts experienced by some users on a river.

- Implement an etiquette education program (wade anglers, float anglers, ramp, river, anchor use).
- Educate landowners and river users on Stream Access Laws (FWP pamphlets already available).
- Create posters for fly shops and FWP license providers and create permanent signage at FASs on river etiquette, boat etiquette, etc.
- Facilitate a working relationship between FWP and the Fishing Outfitter community.
- Establish a Madison River Ambassador program.

#### RULE VI: Enforcement Recommendations

- Establish a separate Madison River Ranger - not shared with BH2.
- Establish a Madison River Ambassador(s) program. On-scene at boat ramps and on-river. Allows opportunity for education and for reporting abuse.

RULE VII: Other Management Recommendations

- Establish a Madison River Commercial Use Working Group and establish an appeal process for distribution of available trips or conflicts and complaints. This group will work with the authority of the FWP Region 3 River Recreation Manager and be comprised of representative outfitters.
  - New permit holders for 2020.
  - Permit holders showing growth into a higher tier in 2020.
  - Permit holders who are issued a lower tier than their historical use shows (ex: 2017-2019: conducted 50+ trips but only conducted 20 trips in 2020).
- Legislative action to move towards allowance of Transfer of River Use Days in specified amounts rather than in its entirety. MCA 37-47-310.

WHEREFORE, petitioner requests the Department of Fish, Wildlife & Parks and the Fish and Wildlife Commission to adopt these new rules pertaining to management of commercial use on the Madison River.



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Michael A. Bias, Ph.D.  
Executive Director  
Fishing Outfitters Association of Montana

October 11, 2019.